

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

**REPUBLIC FIRE AND CASUALTY
INSURANCE COMPANY**

PLAINTIFFS

V.

CIVIL ACTION NO.: 4:10-cv-37-SA-JMV

**MARK AZLIN D/B/A THE BOURBON MALL;
THE BOURBON MALL, INC.**

DEFENDANT

ORDER

This cause is before the court on the plaintiff's motion to supplement initial disclosures and/or discovery responses to disclose an additional witness (#223). Specifically, Movant seeks to substitute Richard Mayer, CPCU, CIC, ARM, AU, Vice President-Commercial Lines for Republic Fire Casualty Insurance Company, in place of previously identified employee witness Rick Reynolds. Mr. Reynolds left his employment with Republic in August and has since taken another job in Dallas, Texas, outside the subpoena power of this court, and he remains noncommittal about his trial availability. Movant has offered an affidavit of the potential substitute witness Richard Mayer. Having reviewed the record, the motion, the briefs of the parties, and the applicable law, and having heard oral argument, the court finds as follows:

For the reasons announced by the court on the record at the conclusion of the motion hearing on December 12, 2012, the court finds that the motion is well taken and should be GRANTED with the following parameters and clarifications:

- The plaintiff must use commercially reasonable and diligent efforts to produce the original witness, Mr. Reynolds, at trial, and his availability shall be determined by the time of the pretrial conference.

- Should those efforts prove futile, plaintiff's substitute witness, Mr. Richard Mayer, will be deemed to have been identified in the initial disclosures on the matters identified in the affidavit of Mr. Mayer docketed as document #226-1.
- Discovery will not be reopened and all evidentiary rulings will be preserved for the District Judge to determine admissibility at trial.

SO ORDERED this, the 13th day of December, 2012.

/s/Jane M. Virden
U. S. MAGISTRATE JUDGE